

**From:** Simms, Francine  
**Sent:** Tuesday, December 23, 2008 4:20 PM  
**To:** Chief Clerks  
**Cc:** Wallace, Mike; Dolan, Glennon; Gilbert, David  
**Subject:** 08-0175 Ruling and E-mail attachement CUB Motion to Compel  
**Attachments:** 08-0175RulDiscMos4.doc

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**From:** Julie Lucas-Soderna [mailto:jlucas@citizensutilityboard.org]  
**Sent:** Tuesday, December 23, 2008 2:53 PM  
**To:** Gilbert, David  
**Subject:** RE: CUB Motion to Compel

ALJ Gilber - I am sorry to have taken so long to respond...

The Company has not provided information specifically responding to subsection (b)(iii) of 4.02 – they only refer to the response to subsection (b)(ii), which is the 15 or so boxes of complaint data. I believe an effective response to 4.02(b)(ii) calls for a narrative indicating whether or not the Company uses key words or complaint categories to track and monitor complaints in the Compliance Database, and what those terms are.

Thank you and don't hesitate to request additional information – I am available the rest of the afternoon.

**JULIE L. SODERNA**  
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For money saving advice and consumer tips, visit [www.citizensutilityboard.org](http://www.citizensutilityboard.org)

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**From:** Gilbert, David [mailto:dgilbert@icc.illinois.gov]  
**Sent:** Tuesday, December 23, 2008 12:00 PM  
**To:** @ Soderna, Julie  
**Subject:** FW: CUB Motion to Compel

Can you tell me the status of sub-part (b)(iii) of your DR 4.02. Is that still in dispute? Thanks, DG

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**From:** @ Hayward, Ethan  
**Sent:** Monday, December 22, 2008 1:48 PM  
**To:** Gilbert, David; Julie Lucas-Soderna  
**Cc:** @ Clancy, Kevin; Marty McManaman; @ Chopra, Kavita; Dave Kolata  
**Subject:** RE: CUB Motion to Compel

USESC has responded to both those requests and does not consider them to be at issue, seeing as they do not appear to be the subject of CUB's motion to compel. They were merely mentioned in the motion to strike as examples of what USESC considered to be duplicative requests.

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**From:** Gilbert, David [mailto:dgilbert@icc.illinois.gov]  
**Sent:** Monday, December 22, 2008 1:21 PM  
**To:** Ethan F. Hayward; Julie Lucas-Soderna  
**Cc:** Kevin Clancy; Marty McManaman; @ Chopra, Kavita; Dave Kolata  
**Subject:** RE: CUB Motion to Compel

There are 2 left to address – Does US still seek to strike 4.04 & 4.21?  
Thanks for the other info.

DG

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**From:** @ Hayward, Ethan  
**Sent:** Monday, December 22, 2008 12:54 PM  
**To:** Julie Lucas-Soderna; Gilbert, David  
**Cc:** @ Clancy, Kevin; Marty McManaman; @ Chopra, Kavita; Dave Kolata  
**Subject:** RE: CUB Motion to Compel

Judge Gilbert,

Further to our conversation this morning, I have reviewed USESC's initial and supplemental responses to CUB's Fourth Set of Data Requests for purposes of your ruling on USESC's Motion to Strike and CUB's Motion to Compel.

Since filing its Motion to Strike, USESC has provided either initial or supplemental responses to the following requests: 4.02(a), 4.02(b)(i), 4.02(b)(iii), 4.02(c) through 4.02(i), 4.07, 4.16, 4.18, 4.22, 4.27 and 4.28.

USESC objected to Requests 4.12 and 4.13, and stands by those objections. The same goes for Requests 4.25, 4.33 and 4.39.

USESC has ready and intends to produce today information responsive to requests 4.05, 4.06(b) and 4.06(c), and anticipates being in a position later today to provide information responsive to 4.06(a), 4.06(d) and 4.24. USESC is also making available for inspection today documents responsive to 4.02(b)(ii) (and CUB Request 6.09).

USESC has provided both initial and supplemental responses to CUB Request 4.34 and stands by those responses.

Please let me know if there are any Requests about which you inquired that I seem to have omitted.  
Thank you.

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**From:** Julie Lucas-Soderna [mailto:jlucas@citizensutilityboard.org]  
**Sent:** Friday, December 19, 2008 4:44 PM

**To:** 'Gilbert, David'

**Cc:** Kevin Clancy; Marty McManaman; Ethan F. Hayward; 'Kavita Chopra'; 'Dave Kolata'

**Subject:** RE: CUB Motion to Compel

Dear ALJ Gilbert,

I'm sorry I was not available on Thursday to discuss the discovery issues you inquired about. I have been sick at home, but I've had a chance to quickly review the most recent discovery served by US Energy and am able to provide you with some additional information regarding the data requests that are still an issue in CUB's Motion to Compel. As indicated in CUB's Reply to the motions, CUB withdraws its Motion to Compel responses to the following data requests 2.36, 2.43, 2.46, 2.69, 4.02(b)(i), 4.26, 4.29, 4.30, 4.40, and 4.41. In addition to those, because CUB has received additional supplemental responses, CUB no longer requests that responses to 4.03, 4.23(e) (to which the Company has stated it has no additional information to provide) and 2.70.

With regard to the Company's response to 4.02(b)(ii), at the time I drafted the Reply, I did not realize the enormous volume of material that existed (in Ex. 6.09, which the Company states is responsive to 4.02(b)(ii)) and that the Company was not intending to produce these documents to CUB. Sitting here today, I don't know of any practical way for CUB, at this stage of the proceeding, to review 15 boxes of material. Further, although CUB has not reviewed these documents, it appears that this information (as stated in CUB's Reply) would have been responsive to several prior data requests, some issued as early as May 2008, which only lends further support to CUB's request that the Company not be allowed to use this material in its defense. Nonetheless, perhaps CUB can arrange a time after the holidays to do a preliminary review of these documents to analyze whether further discovery or any additional steps are necessary to effectuate thorough review of this material in order to ensure a complete record in this proceeding. Likewise, CUB has not been able to effectively review the response to CUB 2.24 or 2.53. If the data in 2.53 is the same as in 6.32, which I presume it is, then CUB withdraws its request to have those responses compelled. However, this is a significant amount of data that CUB also believes would have been responsive to several prior data requests many months ago. It will take time for CUB to evaluate this data.

US Energy's attorneys just indicated to me today that the Company is planning to provide responses to 4.05 & 4.06, as well as 4.24. Since I have not seen this information, I cannot withdraw the request to compel this information. (Although the original request in the Motion to Compel regarding 4.24 sought responses to subparts a, b and c, the information provided by the Company requires additional information to be fully understood, and thus now CUB seeks responsive information to 4.24(c)(d) & (e).)

CUB continues to seek compulsion of responses to 4.34.

CUB will be serving another data request on the Company early next week, largely to clarify some of the Company's supplemental responses, as well as rebuttal testimony. CUB will request in its correspondence accompanying the requests that US Energy respond to these within 2 weeks of service.

If you have any questions, please do not hesitate to call or email. Thank you for your attention to this matter,

**JULIE L. SODERNA**  
Director of Litigation

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**From:** Ethan F. Hayward [mailto:ehayward@lowis-gellen.com]  
**Sent:** Thursday, December 18, 2008 4:36 PM  
**To:** Julie Lucas-Soderna; Kavita Chopra  
**Cc:** Kevin Clancy; Marty McManaman  
**Subject:** RE: CUB Motion to Compel

I just got a call back from ALJ Gilbert to see where things stood and to inform us that he will not be in the office tomorrow. I related to him that we had spoken on the phone and corresponded somewhat as to the data requests that still remain at issue and may be the subject his potential ruling. He asked that if we're able to reach some sort of consensus on which requests have been satisfied and those which CUB still seeks to compel a response, that we email him to that effect some time tomorrow and that he will address it first thing on Monday.

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**From:** Ethan F. Hayward  
**Sent:** Thursday, December 18, 2008 2:56 PM  
**To:** 'Julie Lucas-Soderna'; 'Kavita Chopra'  
**Cc:** Kevin Clancy; Marty McManaman  
**Subject:** CUB Motion to Compel

Julie,

Pursuant to our conversation, Kevin and I have reviewed CUB's reply brief and our recent supplemental responses in order to reach some mutual understanding of where things stand regarding the alleged deficiencies in USESC responses to data requests.

First, your Reply indicates that CUB is apparently satisfied and no longer seeks compulsion of responses to requests 2.36, 2.43, 2.46, 2.69, 4.02(b)(i), 4.26, 4.29, 4.30, 4.40 and 4.41. Please confirm whether this is still the case.

Your reply also indicates that CUB had not yet received Exhibit 6.09, referred to in our supplemental response to DR 4.02(b)(ii). As stated in our footnote to that response, that exhibit consists of 15 boxes of documents. We are willing to make those documents available for CUB's inspection and copying. The Reply also indicates that CUB received supplemental documents responsive to DRs 2.24, 2.53, 2.70 and 4.02(b)(iii) and that it had not yet determined whether it was satisfied with USESC's responses to those requests. Please indicate whether such a determination has been reached yet.

Lastly, the Reply indicates that CUB is either not satisfied or still seeks compulsion of responses to DRs 4.03, 4.05, 4.06, 4.23(e), 4.24(a) and 4.34. We have conferred on our end, and have come up with the following assessments.

USESC stands by its initial response to 4.03. Additional information regarding USESC's compliance department and personnel was provided in response to CUB DRs 6.04, 6.06 and 6.15 as well as in the Direct Testimony of Gord Potter. We believe the information provided so far on this topic to be sufficient.

USESC stands by its initial objections DRs 4.05 and 4.06, as explained in its Reply in Support of its Motion to Strike.

USESC has not uncovered any additional information responsive to DR 4.23 (e) since issuing its initial response, and, as previously stated, is not aware of any occasions where marketing materials were ordered destroyed other than those previously identified.

USESC does not have the information requested in 4.24(a).

USESC stands by its objections and responses to CUB DR 4.34 and and Staff Request 5.34(j).

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